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ELECTRONICALLY  
**FILED**  
 Superior Court of California,  
 County of San Francisco  
**08/06/2021**  
 Clerk of the Court  
 BY: BOWMAN LIU  
 Deputy Clerk

TENDERLOIN HOUSING CLINIC, INC.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF SAN FRANCISCO

SHARON FENNIX, individually, and on  
 behalf of all others similarly situation,

Plaintiff

v.

TENDERLOIN HOUSING CLINIC, INC.,  
 a California corporation; and DOES 1  
 through 10, inclusive

Defendants.

LEAD CASE No. CGC-20-584834  
 (CONSOLIDATED WITH CASE No. CGC-20-  
 587419)

**DEFENDANT TENDERLOIN HOUSING  
 CLINIC, INC.'S ANSWER TO PLAINTIFF  
 SHARON FENNIX'S SECOND AMENDED  
 COMPLAINT**

Complaint Filed: June 9, 2020  
 FAC Filed: April 16, 2021  
 SAC Filed: July 16, 2021

SHARON FENNIX, individually, and on  
 behalf of all others similarly situation,

Plaintiff

v.

TENDERLOIN HOUSING CLINIC, INC.,  
 a California corporation; and DOES 1  
 through 10, inclusive

Defendants.

Case No. CGC-20-587419

Complaint Filed: October 19, 2020

1 Defendant TENDERLOIN HOUSING CLINIC, INC. (“Defendant”), on behalf of itself and no  
2 others, states and alleges as follows for its Answer to the unverified Second Amended Class Action and  
3 Representative Action Complaint (“Complaint”) filed by Plaintiff SHARON FENNIX (“Plaintiff”), as  
4 proxy for the California Labor and Workforce Development Agency, and the Putative Class.

5 **GENERAL DENIAL**

6 Pursuant to California Code of Civil Procedure § 431.30(d), Defendant denies, generally and  
7 specifically, each and every allegation contained in the Complaint, and further specifically denies that  
8 Plaintiff, the putative class members, or the alleged aggrieved employees are entitled to the relief  
9 requested or any relief at all, that they sustained damages or will sustain damages in the sum or sums  
10 alleged, or in any sum, or at all, by any act or omission of Defendant.

11 **AFFIRMATIVE DEFENSES**

12 In further answer to Plaintiff’s Complaint Defendant states the following facts as separate  
13 affirmative defenses to each of the allegations of Plaintiff’s Complaint:

14 **FIRST AFFIRMATIVE DEFENSE**

15 (Failure to State a Cause of Action)

16 Plaintiff’s Complaint, and each cause of action therein, fails to state facts sufficient to constitute  
17 a cause of action against Defendant.

18 **SECOND AFFIRMATIVE DEFENSE**

19 (Statute of Limitations)

20 Plaintiff’s Complaint, and each cause of action therein, is barred, in whole or in part, by the  
21 applicable statute(s) of limitation, including, but not limited to, California Labor Code Section 203;  
22 California Code of Civil Procedure Sections 337, 338, 339, 340 and 343; and California Business &  
23 Professions Code Section 17208.

24 **THIRD AFFIRMATIVE DEFENSE**

25 (Federal Preemption)

26 As and for a further affirmative defense to the Complaint, and to each and every cause of action  
27 contained therein, Defendant alleges that to the extent Plaintiff’s claims involve conduct that is, or seeks  
28 remedies that are governed or regulated by federal law, such claims are preempted.

**FOURTH AFFIRMATIVE DEFENSE**

(Federal Preemption – Labor Management Relations Act)

As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant asserts that Plaintiffs claims are barred in that they are preempted by Section 301 of the Labor Management Relations Act.

**FIFTH AFFIRMATIVE DEFENSE**

(Failure to Exhaust)

Plaintiff failed to timely and completely exhaust her requisite administrative and/or contractual remedies available under applicable Collective Bargaining Agreements, the California Labor Code or other provisions of law prior to commencing this action.

**SIXTH AFFIRMATIVE DEFENSE**

(Binding Arbitration Under Collective Bargaining Agreement)

As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant asserts that Plaintiff's claims are barred in that they are preempted by collective bargaining agreements and subject to binding arbitration under those agreements.

**SEVENTH AFFIRMATIVE DEFENSE**

(Preemption – Supremacy Clause)

As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant asserts that the Supremacy Clause of the United States Constitution bars Plaintiff's claims. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001).

**EIGHTH AFFIRMATIVE DEFENSE**

(Field Preemption)

As and for a further affirmative defense to the complaint, and to each and every cause of action contained therein, Defendant alleges that the Complaint and each cause of action set forth therein, or some of them, cannot be maintained against Defendant because they are preempted by field preemption.

**NINTH AFFIRMATIVE DEFENSE**

(Non-Certifiable Class)

As and for a further affirmative defense to the Complaint, and to each and every cause of action

1 contained therein, Defendant alleges that Plaintiff cannot satisfy the requirements of California Code of  
2 Civil Procedure section 382 because individual questions of fact and law predominate over common  
3 questions, Plaintiff's claims are not typical of those belonging to the putative class members, the class is  
4 not sufficiently numerous, and/or other class requirements cannot be satisfied. Accordingly, this action  
5 is not properly brought as a class action.

6 **TENTH AFFIRMATIVE DEFENSE**

7 (Inadequacy of Class Representative)

8 As and for a further affirmative defense to the Complaint, and to each and every cause of action  
9 contained therein, Defendant alleges that Plaintiff is not a proper representative of the class she purports  
10 to represent.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 (Lack of Superiority)

13 As and for a further affirmative defense to the Complaint, and to each and every cause of action  
14 contained therein, Defendant alleges that the class action procedure is not the superior method for  
15 adjudicating Plaintiff's claims or the claims of the alleged class and, accordingly, this action is not  
16 properly brought as a class action.

17 **TWELTH AFFIRMATIVE DEFENSE**

18 (Lack of Standing)

19 As and for a further affirmative defense to the complaint, and to each and every cause of action  
20 contained therein, Defendant alleges that Plaintiff lacks standing to assert any purported cause of action  
21 alleged in the Complaint and lacks standing to represent the putative class.

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 (Uncertainty)

24 The Complaint, and each cause of action therein, is barred, in whole or in part, because it is  
25 uncertain.

26 **FOURTEENTH AFFIRMATIVE DEFENSE**

27 (Lack of Injury)

28 Plaintiff's Complaint, and each cause of action therein, is barred, in whole or in part, because

1 Plaintiff, the putative class members, and alleged aggrieved employees did not suffer injury as a result  
2 of any of Defendant's alleged knowing and intentional failure to comply with the California Labor  
3 Code.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 (Isolated Error)

6 Plaintiff's Complaint, and each cause of action therein, is barred, in whole or in part, because  
7 Defendant's alleged actions are not a "knowing and intentional" failure to comply with the California  
8 Labor Code to the extent that Defendant's actions amount to an isolated and unintentional payroll error  
9 due to a clerical or inadvertent mistake.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 (Improper Parties)

12 Plaintiff's Complaint, and each cause of action therein, is barred, in whole or in part, to the  
13 extent that Defendant is not the legal entity that was Plaintiff's employer.

14 **SEVENTEENTH AFFIRMATIVE DEFENSE**

15 (Consent)

16 Plaintiff's Complaint, and each cause of action therein, is barred, in whole or in part, because  
17 Plaintiff, the putative class members, and the alleged aggrieved employees consented to any and all  
18 actions alleged in the Complaint, whether lawful or unlawful.

19 **EIGHTEENTH AFFIRMATIVE DEFENSE**

20 (Failure to Mitigate Damages)

21 Plaintiff's Complaint, and each cause of action therein, is barred, in whole or in part, by  
22 Plaintiff's and the putative class members' failure to exercise reasonable care and diligence to mitigate  
23 their alleged damages, if any.

24 **NINETEENTH AFFIRMATIVE DEFENSE**

25 (Lack of Specificity)

26 Plaintiff's Complaint, and each cause of action therein, has failed to allege special damages with  
27 requisite specificity.

28 **TWENTIETH AFFIRMATIVE DEFENSE**

(Laches)

Plaintiff's Complaint, and each cause of action therein, is barred, in whole or in part, by the equitable doctrines of laches because Plaintiff waited an unreasonable amount of time in which to bring this action to Defendant's prejudice.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

(Res Judicata/Collateral Estoppel/Issue Preclusion)

Plaintiff's Complaint and each cause of action therein is barred by the doctrines of collateral estoppel, res judicata, and/or issue preclusion.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

(Waiver)

Plaintiff's Complaint, and each cause of action therein, is barred, in whole or in part, in that Plaintiff, the putative class members and the alleged aggrieved employees have waived any claims they may have against Defendant.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

(Privilege and Justification)

As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that Plaintiff's claims are barred because Defendant's conduct was privileged and justified.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

(Adequate Remedies at Law)

As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that Plaintiff, the putative class, and the alleged aggrieved employees are not entitled to equitable relief insofar as they have adequate remedies at law.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

(Estoppel)

The causes of action contained in the Complaint are barred by the doctrine of estoppel.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

(Unclean Hands)

1 Defendant is informed and believes, and based upon such information and belief, that the  
2 Complaint and each and every purported cause of action therein is barred by the doctrine of unclean  
3 hands.

4 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

5 (Failure to Follow Instructions)

6 As and for a further affirmative defense to the Complaint, and to each and every cause of action  
7 contained therein, Defendant alleges that any failure to comply with Defendant's work-time recording  
8 policies and requirements, was the result of failure by Plaintiff, the putative class members, and the  
9 alleged aggrieved employees to follow Defendant's reasonable instructions.

10 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

11 (Attorneys' Fees and Costs)

12 As a separate and distinct affirmative defense Defendant alleges that the Complaint and each  
13 and every cause of action therein fails to properly state a claim for attorneys' fees or costs.

14 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

15 (Doctrine of After-Acquired Evidence)

16 Plaintiff's Complaint, and each cause of action therein, is barred, in whole or in part, by the  
17 doctrine of after-acquired evidence.

18 **THIRTIETH AFFIRMATIVE DEFENSE**

19 (Violation of Due Process)

20 As and for a further affirmative defense to the Complaint, and to each and every cause of action  
21 contained therein, Defendant alleges that certification of a class, and the prosecution of a representative  
22 action on behalf of the general public under California Business and Professions Code section 17200 *et*  
23 *seq.*, as applied to the facts and circumstances of this case, would constitute a denial of Defendant's due  
24 process rights, both substantive and procedural, in violation of the Fourteenth Amendment to the United  
25 States Constitution and the California Constitution.

26 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

27 (Good Faith Business Practice)

28 As and for a further affirmative defense to the Complaint, and to each and every cause of action

1 contained therein, Defendant alleges that each cause of action therein is barred because, at all times,  
2 Defendant acted in good faith, did not engage in any unfair business practices, or otherwise violate any  
3 applicable laws.

4 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

5 (Breach of Duty)

6 As and for a further affirmative defense to the Complaint, and to each and every cause of action  
7 contained therein, Defendant alleges Plaintiff's claims, and those of any putative class members and  
8 aggrieved employees, are barred by their own breach of the duties owed to Defendant under California  
9 Labor Code section 2854, 2856, 2857, 2858 and/or 2859.

10 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

11 (Compliant Wage Statements)

12 Plaintiff's Complaint, and each cause of action therein, is barred, in whole or in part, to the  
13 extent Plaintiff, the putative class, and alleged aggrieved employees could promptly and easily  
14 determine from their wage statements all information required pursuant to Cal. Labor Code section 226,  
15 subdivision (a).

16 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

17 (Labor Code § 226 – No Intentional Failure)

18 As and for a further affirmative defense to the Complaint, and to each and every cause of action  
19 contained therein, Defendant alleges that, even assuming, arguendo, Plaintiff and the putative class  
20 members and alleged aggrieved employees were not provided with a proper itemized statement of  
21 wages and deductions, they are not entitled to recover damages or penalties because Defendant's  
22 alleged failure to comply with California Labor Code section 226(a) was not a "knowing and intentional  
23 failure" under California Labor Code section 226(e).

24 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

25 (Reasonable Notice)

26 Plaintiff's, the putative class's, and the alleged aggrieved employees' claims against Defendant  
27 are barred, in whole and in part, as Defendant did not have notice of any alleged defect or a reasonable  
28 opportunity to repair, correct, or cure any such alleged defect.



**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

(Release)

To the extent that Plaintiff or any putative class member or alleged aggrieved employee Plaintiff purports to represent entered into any individual settlement agreement, any such individual has released the claims alleged in the Complaint.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

(All Wages Paid)

Plaintiff, the putative class members, and the alleged aggrieved employees have been paid and/or received all wages due to them by virtue of their employment.

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

(Bona Fide Dispute)

As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant alleges that any violation of the Labor Code or an Order of the Industrial Welfare Commission was an act or omission made in good faith and Defendant had reasonable grounds for believing that its wage payment practices complied with applicable laws and that any such act or omission was not a violation of the Labor Code, the common labor or any Order of the Industrial Welfare Commission such that Plaintiff and the putative class members or alleged aggrieved employees are not entitled to any penalties or damages in excess of any wages which might be found to be due. Specifically, Plaintiff cannot recover Labor Code section 203 or Labor Code section 226(e) civil penalties because any alleged failure to pay wages or provide compliant wage statements was based on a good faith dispute regarding the applicable law or facts.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

(No Willful Failure)

Assuming, *arguendo*, that Plaintiff and the putative class and alleged aggrieved employees are entitled to additional compensation/penalties, Defendant has not willfully or intentionally failed to pay any such additional compensation to them, to justify any awards of penalties or fees.

**FORTIETH AFFIRMATIVE DEFENSE**

(Civil Penalties Unconstitutional – Due Process and Separation of Powers)

As and for a further affirmative defense to the Complaint, and to each and every cause of action contained therein, Defendant asserts the penalties sought in Plaintiff's Complaint violate the Due Process and Separation of Powers Clauses of the United States and California Constitutions. *Lockyer v. R.J. Reynolds Tobacco Co.*, 37 CaL 4th 707 (2005); *Ratner v. Chemical Bank New York Trust Co.*, 54 F.R.D. 412 (S.D.N.Y. 1972); *State Farm v. Campbell*, 538 U.S. 408, 416 (2003), and subsequent case law regarding the same issue.

#### **FORTY-FIRST AFFIRMATIVE DEFENSE**

(Opportunity to Take Duty-Free Meal and Rest Breaks and to Obtain Expense Reimbursement)

Plaintiff's, the putative class members' and the alleged aggrieved employees' meal and rest break claims and expense reimbursement claims are barred in whole or in part because Plaintiff, the putative class, and alleged aggrieved employees were provided an opportunity to take lawful duty-free meal and rest breaks in compliance with applicable California law and failed to do so and were given the opportunity to be reimbursed for business expenses but failed to request expense reimbursement.

#### **FORTY-SECOND AFFIRMATIVE DEFENSE**

(Offset)

Recovery is barred, in whole or in part, to the extent that Defendant compensated Plaintiff, the putative class members, or the alleged aggrieved employees for any alleged wage violations or in excess of what was required by law.

#### **FORTY-THIRD AFFIRMATIVE DEFENSE**

(Avoidable Consequences)

Each purported cause of action in the First Amended Complaint, or some of the causes of action, are barred, or recovery should be reduced, pursuant to the doctrine of avoidable consequences.

#### **FORTY-FORTH AFFIRMATIVE DEFENSE**

(Not Employer or Joint Employer)

Plaintiff's claims and each of them, as well as the claims of the putative class and alleged aggrieved employees are barred in whole or in part because Defendant was not an employer, statutory employer, dual employer, or joint employer of Plaintiff, the putative class members, or the alleged aggrieved employees and/or did not exercise sufficient control over their employment to be held liable

1 for any purported cause of action alleged in the Complaint.

2 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

3 (Failure to Exhaust)

4 Defendant is informed and believes, and based upon such information and belief alleges, that the  
5 Complaint, and each and every purported cause of action alleged therein, is barred, in whole or in part,  
6 because Plaintiff failed to timely and completely exhaust requisite administrative remedies available to  
7 her under the California Labor Code, including the Labor Code Private Attorneys General Act section  
8 2698, *et seq.*, prior to commencement of this action.

9 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

10 (Lack of Standing)

11 Defendant is informed and believes, and based upon such information and belief alleges, that  
12 Plaintiff lacks standing to assert each and every one of the causes of action alleged in the Complaint,  
13 and lacks standing to represent the alleged aggrieved employees. Plaintiff lacks standing to bring  
14 claims for any civil penalties on behalf of others because she is not an “aggrieved employee” pursuant  
15 to Labor Code Private Attorneys General Act, Labor Code sections 2698, *et seq.*

16 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

17 (Incorrect Civil-Penalty Amounts)

18 Plaintiff impermissibly stacks one penalty on another for a single alleged violation. *See Smith v.*  
19 *Lux Retail North America, Inc.*, No. 13-01579, WL 2932243, at \*3-4 (N.D. Cal. 2013.)

20 **FORTY-NINTH AFFIRMATIVE DEFENSE**

21 (PAGA-Any Penalties Limited to Initial Violation)

22 As a separate and affirmative defense to Plaintiff’s Complaint and to each purported  
23 claim for relief therein, Defendant alleges insofar as Defendant has never been cited by the Labor  
24 Commissioner, or had a judgment entered against them in a court of law, with respect to any of  
25 Plaintiff’s Labor Code claims, any civil penalties awarded under the Private Attorneys General Act,  
26 Labor Code section 2698, *et seq.*, must be limited to those penalties applicable to an initial violation.

27 **FIFTIETH AFFIRMATIVE DEFENSE**

28 (Civil Penalties Unjust)

1 The civil penalties Plaintiff seeks pursuant to California Labor Code section 2699(e) are unjust,  
2 arbitrary and oppressive, or confiscatory based on the facts and circumstances of this case.

3 **FIFTY-FIRST AFFIRMATIVE DEFENSE**

4 (Due Process and Manageability)

5 Plaintiff's Complaint, and each cause of action therein alleged, is not susceptible to common  
6 proof, is fact intensive, and requires highly individualized inquiries into liability. As such, adjudicating  
7 these claims on a representative basis under PAGA would present intractable management issues that  
8 would deprive Defendant of its right to a fair trial.

9 **FIFTY-SECOND AFFIRMATIVE DEFENSE**

10 (No Recovery of Wages)

11 The Complaint's claims fail, in whole or in part, because Plaintiff and the alleged aggrieved  
12 employees cannot recover unpaid wages through a claim for civil penalties under the Labor Code  
13 Private Attorneys General Act.

14 **FIFTY-THIRD AFFIRMATIVE DEFENSE**

15 (Additional Affirmative Defenses Reserved)

16 As a separate and distinct affirmative defense, Defendant presently has insufficient knowledge  
17 or information on which to form a belief as to additional, unstated affirmative defenses. Defendant  
18 reserves the right to file an amended and/or supplemental Answer when such knowledge or information  
19 becomes available.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Defendant prays as follows:

- 22 (a) That Plaintiff takes nothing from Defendant by reason of her Complaint;  
23 (b) That the Complaint be dismissed with prejudice;  
24 (c) That judgment be entered in favor of Defendant;  
25 (c) That Defendant recover costs and reasonable attorneys' fees; and  
26 (d) For such other and further relief as the court may deem appropriate.

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1 Dated: August 6, 2021

SABER LAW GROUP

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4 By: \_\_\_\_\_  
5 SHIRLEY WANG  
6 JEAN M. SEDLAK  
7 Attorneys for Defendant  
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